of *Caswell v. Powell Duffryn Associated Collieries Ltd.*[5] it appears that the position in England, prior at least to the Law Reform (Contributory Negligence) Act 1945, in respect of injuries caused by a breach of statutory duty does not differ from an action in respect of injuries caused by any other wrong where the injury was caused wholly or in part by the omission of the injured party to take the ordinary care that would be expected of him in the circumstances, and I take it that must be regarded as the position at the present moment in the Colony. On the ground, then, that the deceased's own lack of care was the substantial cause of the accident I think that this claim must fail.

It may be desirable in case the matter is carried further for me to reach a finding on the widow's financial loss arising out of the death of the deceased. She said he normally gave her $400 per month for the maintenance of the household including breakfast and dinner for the husband and the education of the children. She described him as a building contractor. Now I think it is clear in view of the evidence given by the Prosecution witnesses that for the six months prior to his death the deceased's main activity was in connection with the farm referred to earlier, and the evidence of building contracts during the first part of 1953 is tenuous. I think the widow's picture may have been true of an earlier period but I doubt if it represented the position at the date of her husband's death. Evidence was adduced that the farm yields about $150 per month income. The information available is not at all as full as one could wish, but assuming the deceased was making about $150 a month from his farming activities and was still making something from sub-contracts I am inclined to think that $200 per month is perhaps as fair a figure as one can reach on the information available as to what the widow has lost financially by her husband's death.

I give judgment for the defendant with costs.

Claim dismissed.

Solicitors: *Hilborne & Murphy; Mallal & Namazie.*

HAJI ISMAIL BIN MAT SA'AT v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Wilson and Buhagiar JJ.) February 14, 1955]

[K. L.—F. M. Criminal Appeal No. 75 of 1954]

Prevention of Corruption Ordinance, 1950, ss. 3(a) and 13(3)—Penggawa—Duties and functions of—Interpretation and General Clauses Ordinance, 1948, s. 2(1)(60A)—Conviction on uncorroborated evidence of accomplice—Direction.

The appellant in this case was convicted under s. 3(a) of the Prevention of Corruption Ordinance in that he, being an agent, viz. a Penggawa of a place in the State of Kelantan, corruptly accepted the sum of $50 as an inducement for showing favour to another person in relation to the appellant's principal's affairs.

By virtue of s. 2(1)(60A) of the Interpretation and General Clauses Ordinance, 1948, as amended by Ordinance No. 41 of 1953, a Penggawa, in the State of Kelantan is a Penghulu. A Penghulu is an officer recognised in various Statutes and is given various powers, duties and functions, *inter alia*, under the Courts Ordinance, 1948, a Penghulu has judicial functions.

Held: a Penggawa is an agent within the meaning of the Prevention of Corruption Ordinance, 1950.

In the course of his grounds of decision, the learned trial Judge said: "I did not regard them (P.W.'s 3, 5, 6 and 7) as accomplices whose evidence is unworthy of belief, and even if they were to be considered as such I warned myself of the danger of accepting their evidence." Counsel for the appellant argued that once the trial Judge had come to the conclusion that the said prosecution witnesses were not accomplices it was impossible for him to warn himself adequately against dangers of convicting upon their evidence.

Held: the warning as expressed in the trial Judge's grounds of decision would not be sufficient direction in a case of a trial by jury or with assessors, but in this case the trial Judge had clearly in his mind the legal problems relating to the evidence of accomplices and the provisions of s. 13(3) of the Prevention of Corruption Ordinance, 1950.

COURT OF APPEAL.

R. H. V. Rintoul (*Lim Cheang Poh* with him) for the appellant.

E. Brown (Federal Counsel) for the respondent.

Cur. Adv. Vult.

The judgment of the Court was delivered by:—

Buhagiar J.: —The appellant was charged with an offence punishable under section 3(a) of the Prevention of Corruption Ordinance, 1950, in that he, being an agent, to wit the Penggawa of Daerah Limbat in the district of Kota Bharu in the State of Kelantan, corruptly accepted the sum of $50 from one Riffin bin Said for himself as an inducement for showing favour to the said Riffin bin Said in relation to the appellant's principal's affairs. The trial Judge found the appellant guilty on this charge, convicted him and sentenced him to imprisonment for one year.

The first ground of appeal was that no evidence was led by the prosecution as to the duties or functions of a penggawa and therefore no *prima facie* case was established at the close of the case for the prosecution. A short answer to this contention is that in the State of Kelantan a penggawa is a penghulu (see section 2(1)(60A) of the Interpretation and General Clauses Ordinance, 1948, as amended by Ordinance No. 41 of 1953). A Penghulu is an officer recognised in various statutes and by statute he is given various powers, duties and functions; *inter alia* under the Courts Ordinance, 1948, a penghulu has judicial functions. That being so, it is not necessary to adduce any evidence as to the powers, duties and functions of a penggawa and there can be no question that a penggawa is an agent within the meaning of the Prevention of Corruption Ordinance, 1950.

The second ground of appeal was that the learned Judge erred in law in holding that the appellant corruptly accepted $50 for himself as specified in the charge; it was submitted that the third and sixth prosecution witnesses alleged that the appellant asked for a sum of $300 to be given to the Officer-in-Charge of the Police District. It is true that these two witnesses stated that the appellant had so told them but we do not consider that, on consideration of all the evidence, the trial Judge was wrong, in finding that, in fact, the appellant had asked for the money for himself.

The third ground of appeal was that the trial Judge erred in law in that he did not warn himself of the danger of convicting the accused on the uncorroborated evidence of accomplices. The relevant part of the trial Judge's Grounds of Decision runs as follows: "I did not regard them (P.W.'s 3, 5, 6 and 7) as accomplices whose evidence is unworthy of belief, and even if they were to be considered as such I warned myself of the danger of accepting their evidence." It was argued by Counsel for the appellant that once the trial Judge had come to the conclusion that the said prosecution witnesses were not accomplices it was impossible for him to warn himself adequately against the dangers of convicting upon their evidence and that, on the assumption that these prosecution witnesses were accomplices, he did not warn himself against the dangers of convicting upon their uncorroborated evidence. While we consider that the warning as expressed in the Grounds of Judgment would not be a sufficient direction in the case of a trial by Jury or with assessors, we are satisfied that the trial Judge had clearly in mind the legal problems relating to the evidence of accomplices, and particularly the provisions of Section 13(3) of the Prevention of Corruption Ordinance, 1950. The evidence clearly shows that it was the accused who played the leading part in this corrupt transaction and that the money was paid by the aforementioned four prosecution witnesses after various requests moving from the appellant.

We could, therefore, see no ground for quashing the conviction and dismissed the appeal

Appeal dismissed.

Solicitors for the appellant: *Pillai, Lim, Lee & Hwang.*

RAMASAMY v. REGINA

[A. Cr. J. (Spenser Wilkinson J.) March 30, 1955]
[Penang — Criminal Appeal No. 8 of 1955]

Criminal law and Procedure — Recall of witness for further evidence — Evidence Ordinance, 1950, s. 165 — Criminal Procedure Code (Cap. 21), s. 451 — Powers of Magistrate under — Discretion of Court to recall witness after close of defence case — Provisions of s. 182(f) Criminal Procedure Code — Negligent driving — Res ipsa loquitur doctrine.

The appellant in this case, on a charge of negligent driving of a motor cycle contrary to s. 4(2) Motor Vehicles (Driving Offences) Proclamation was convicted and fined $50; his licence was endorsed and he was ordered to pay $100 as compensation to the complainant.

At the close of the defence case, the learned Magistrate formed the opinion that further evidence should be called and he invoked s. 165 of the Evidence Ordinance. He then directed for further investigation.

Held: (1) s. 165 of the Evidence Ordinance, 1950, does not apply to Magistrates' Courts at all. The appropriate section in so far as the Magistrates' Courts are concerned is s. 451 of the Criminal Procedure Code (Cap. 21); (2) in view of the provisions of s. 182(f) of the Criminal Procedure Code (Cap. 21) it is of the utmost importance that the whole of the case for the prosecution should be put before the Court before the defence is called upon. If the case for the prosecution does not disclose a case which then warrants a conviction the defendant is entitled to an acquittal. If the prosecution or the Court is going to make further investigations and call further evidence after the accused had been called upon for his defence then the provisions of s. 182(f) will become nugatory.

The evidence of negligence in this case was extremely scanty and it appeared that the learned Magistrate had applied the doctrine of *res ipsa loquitur*.

Held: it is wrong to apply the doctrine of *res ipsa loquitur* in criminal cases in which negligence must be positively proved.

Cases referred to:—

(1) *Public Prosecutor v. Yeoh Chee Bah & Ors.* (K.L. — Criminal Miscellaneous Application No. 7 of 1947 — unreported).

(2) *Yap Fook Yew & Anor. v. Public Prosecutor* (K.L. — Criminal Appeal No. 47 of 1949 — unreported).

(3) *Balfour v. Public Prosecutor* (1949) M.L.J. Supp. 8.

(4) *Rex v. Bakar bin Sahat* (1951) M.L.J. 202; 2 M.L.R. 207.

(5) *Rex v. Day* (1940) 1 All E.R. 402.

CRIMINAL APPEAL.

G. H. Goh for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J.: — The appellant in this case was charged with negligent driving of a motor cycle contrary to section 4(2) of the Motor Vehicles (Driving Offences) Proclamation. He was convicted and fined $50 his licence was endorsed and he was ordered to pay compensation to the complainant in the sum of $100.

The complainant's case was that he was walking along Perak Road when he was knocked down from behind and rendered unconscious, and his evidence was to some extent supported by P.W. 2, a widow, who stated she was in front of her house at the time and witnessed the accident. The case for the appellant on the other hand was that as he approached the entrance of the Perak Road hospital a Chinese cyclist came out of the hospital entrance, that he swerved to the left to